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ABSTRACT

This brief report consists of a series of observations on governance, planning, and coordination in Montana postsecondary education. It offers an impressionistic overview of three selected issues: the regents and the 1972 Constitution (background, governance, accountability, and legal protection); Governance of Vocational-Technical Centers (the Board of Public Education, the Superintendent of Public Instruction and local district boards); and Comprehensive Statewide Planning and Coordination. This report does not offer solutions to these problems, but simply identifies them. (Author/PG)

STAFF REPORT NO. 8
ISSUES IN GOVERNANCE, PLANNING AND COORDINATION

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INTRODUCTION

This brief report consists of a series of observations on governance, planning and coordination in Montana post-secondary education. Unlike most of our staff reports, which have consisted primarily of factual and statistical information, this report offers an impressionistic overview of three selected issues. It does not offer solutions but simply attempts to identify problems.

CHAPTER I

THE REGENTS AND THE 1972 CONSTITUTION

Background

The Montana Constitution established a Board of Regents of Higher Education and vested in that Board the "government and control of the Montana University System", including "full power, responsibility and authority to supervise, coordinate, manage and control the Montana University System".

The significance of the establishment of the University System in the Constitution is that it is no longer a creature of the legislature and that the basic structure of higher education is not subject to alteration by statute. In effect, higher education is a constitutional entity in the same way as the legislature, the executive and the judiciary branches of government, in that it cannot be altered by the legislature. In this respect the Regents can be described as "constitutionally autonomous".

The operational meaning of constitutional status is a more complex subject. Fourteen states, including Montana, have conferred some type of constitutional status upon their universities. In each of these states the operational meaning is different depending upon

-the constitutional language
-judicial and attorney general interpretations
-corporate status and/or constitutional status of the universities
-the extent to which the universities have acquiesced in legislative and executive mandates
-tradition, powers given elsewhere in the constitution to other branches of government and state agencies
-the political climates in the states at the time issues were resolved

In all states with constitutional universities there are limitations to Autonomy. One such limitation is dependence upon the legislature for funding.*

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*The extent to which the legislature may attach conditions to appropriations is limited in most states. The following excerpt from a Michigan Law Review article describes these limitations:

> "While it must be recognized that the legislature's powers to make appropriations to a constitutional university does not include and is separate from the power to control the affairs of its university, the legislature can within reason attach conditions to its university appropriations. If a constitutional university accepts such conditioned funds, it is then bound by the conditions. There are not many decisions in this area, however, so the line between conditions the legislature can validly attach and those it cannot has not been drawn in a distinct fashion. Conditions which require the university to follow prescribed business and accounting procedures have generally been found to be valid. The courts have also sustained conditions which

Another is, that in its exercise of general policy powers, the state prevails over the constitutional prerogatives of a university. A third limitation is that provisions of a constitution which confer powers and responsibilities upon other governmental authorities and court decisions may also limit autonomy.

Until there are court rulings and/or a series of policy precedents, the precise powers of the Board of Regents of the Montana University System will be uncertain. Therefore, this

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require, on penalty of losing part of the appropriations, annual reports to the governor, and fair and equitable distribution of an appropriation among the departments of the university or maintenence of university departments. It has also been held that the legislature can properly make non-teaching employees subject to the state's workmen's compensation law, and can require loyalty oaths by the teachers. On the other side of the line, a condition that the university move a certain department of the school has been held to be invalidly attached, and an attempt to limit the amount of the funds that can be spent for a given department is likewise an invalid condition. It is clear that limits should be placed on the use of the conditioned appropriations to strip the university of its constitutional authority."

W. P. Wooden, "State Universities - Legislative Control of a Constitutional Corporation", Michigan Law Review, 1957, 55728)

discussion will not attempt to provide a legal interpretation of the Constitution but will instead deal with the authority of the Regents from a policy viewpoint. The issue here is how the Constitution might be implemented in such a way as to provide the most effective governance for the University System while insuring accountability and protection of the public interest.

Effective Governance

What are the characteristics of an effective system of governance?* Governance should be structured so as to protect the essential functions of higher education including academic freedom. It should insulate colleges and universities from political partisanship. It should always delegate authority and operational flexibility along with responsibility. And finally, governance should include mechanisms for accountability to those whose resources support the institution.

A strong board of regents with constitutional authority can provide one of the most effective safeguards against the undermining of academic freedom and interferences of partisan politics. This is one of the critical functions of any govern-

*We are dealing here with the relationship of the state to the University System and not with internal governance.

ing board. Along with this responsibility comes the obligation to maintain academic responsibility by guarding against the misuse of academic freedom and by assuring that higher education is conducted in an orderly and equitable manner. In order to fulfill its charges, the board must have full authority over internal management of the System.* This includes authority

--to establish goals for the system
--to provide for system and campus administrative leadership
--to allocate decision-making responsibility
--to provide for decision-making processes
--to establish and eliminate institutions and programs
--to receive appropriation for the system
--to reallocate funds internally without the constraints of line item and preaudit controls

A recent study of constitutional autonomy conducted by the Center for Research and Development in Higher Education found "that all of the constitutional universities studied were absolutely free of state control in matters related to purchasing, personnel matters, internal transfers of money, and admissions standards".**

*Some of this authority will, of course, be delegated to system and campus chief executives who are accountable to the board.
**L. A. Glenny and T. K. Dalgish, Public Universities, State Agencies and the Law: Constitutional Autonomy in Decline (1973).

Accountability of Governing Boards

Even a constitutional board must be accountable to the public and to elected officials. Governing boards fulfill their accountability functions by (1) full public disclosure of information relevant to the conduct of university affairs except where the rights of individuals to privacy may be involved, (e.g. personnel files); (2) cooperation with the appropriate state agencies in postaudits of expenditures, personnel actions, purchases and in examination of effective use of resources.* The ultimate assurance of public accountability is the continued dependence upon the public for funding.

Audits by the executive and legislative branches of state government are the primary mechanisms for assuring fiscal responsibility and expenditures in compliance with the law. The most effective auditing methods focus upon the aggregate programs and formulae which are utilized in the initial allocation of funds. The least effective, and often counterproductive

*The Montana Constitution provides that "The funds and appropriations under the control of the Board of Regents are subject to the same audit provisions as are all other state funds." Our staff reviewed the Proceedings of the Constitutional Convention and consulted with several delegates who participated in the drafting of Article X ("Education and Public Lands"). It appears that the provision calling for state audits was intended to apply only to postaudits.

auditing methods are those which attempt to enforce line item compliance. Such an approach involves state government in the internal budget operations and administration of the system and the institutions. It deprives those responsible for management of the flexibility to respond to rapid changes in such matters as enrollments and costs. This flexibility is particularly important within a biennial budget which must attempt to anticipate conditions and needs two to three years in advance of actual expenditures.

The type of accountability which is described in this discussion is accountability for outcomes and results. This accountability assures the state of effective management by providing the board with the authority to manage. Rigid and detailed controls over internal management would deprive the Regents and their administrative officers of necessary flexibility. Such controls make accountability difficult if not impossible. Additionally, line item and preaudit controls are seldom cost effective in higher education. They tend to create bureaucratic rigidities which fail to adequately recognize the differences in function and management procedures between higher education and agencies of state government.

Limitations of Legal Protection

Finally, neither constitutional status nor any other legal protection can be relied upon exclusively to protect the proper measure of institutional autonomy. As the study of constitutional autonomy, cited earlier, concluded,

> The findings of the present investigation indicate few occasions, however, when a tax-supported institution of higher education, whatever its legal status, can successfully resist concerted legislative pressures, particularly in matters of degree only, the constitutional university being able to fight somewhat longer before bowing to pressure, and perhaps in the process able to stave off transitory legislative demands. Compromise or indulgence about lesser matters as a short-run tactic in order to retain the freedom to act on more major ones may preserve independence. The danger lies in such acquiescing tactics becoming a long-term mode of operation so that subsequently a court may interpret past compliance as a legal abdication of institutional autonomy...
>
> In the long run, however, institutional autonomy rests primarily on the amount of trust that exists between state government and institutions of higher education. That trust colors relationships between the two sectors so much that talk of the marginal effects of legal status pale into something close to insignificance by comparison. One official in a CS university stated, 'We're not going to get anywhere unless we can open up with each other. The old style of being guarded and suspicious has got to end!' This study con-

cludes that he is right. There are too many ways that state government can assert controls over institutions of higher education, whatever their legal status, to permit confidence in an institution's ability to operate with complete or even marginal autonomy. The power of the university to protect itself, and the academic values it is assumed to have, from political and bureaucratic interference, rests primarily on public trust and confidence.

CHAPTER II

GOVERNANCE OF VOCATIONAL-TECHNICAL CENTERS

Governance responsibilities for the five vocational-technical centers are currently divided among three authorities.

1.) The Board of Public Education has been designated the governing board of the state of Montana for vocational education. Its authority over the five centers includes

- --approval or disapproval over programs and budgets
- --determination of student charges
- --adoption of a state plan for the orderly development of vocational education
- --setting qualifications of instructors as well as standards for approval of courses and programs, and a system of evaluation of vocational education
- --establishing a basis for apportionment of state and federal vocational education funds within legislative and congressional intent.

2.) The Superintendent of Public Instruction administers the policies of the Board of Public Education, as well as state and federal laws related to vocational education; is responsible for state supervision and administration of vocational education, maintains vocational education records, provides vocational education supervisory and consultative assistance to districts, and reports the status of vocational education in the state when requested by the Board of Public Education.

3.) Local School District Boards administer the centers according to state law, policies set by the Board of Public Education, and regulations established by the Superintendent of Public Instruction.

The basic problems of this structural arrangement are:

--Budget and program control are at the state board and superintendent level while administrative responsibility is in the hands of the local board and of center directors who are responsible to the local board.

--The taxpayers in the counties where the centers are located pay a one mill levy to support the centers despite the fact that the centers are charged with serving the entire state (as opposed to local or regional service areas). This, along with the administrative authority of the high school makes for a strong element of local control. The county levy also raises questions of equity - should the county in which a center with statewide service function pay a special tax? (If so, should the same logic apply to counties with other state-oriented post-secondary institutions, e.g., units of the University System?)

--The Superintendent, an elected official, is the state board's executive officer for vocational education. While this situation has the advantage of providing a source of independent staff advice for the board, it also has the potential of creating management and accountability problems, particularly if philosophical or other differences between the board and the superintendent should develop.

Partly because of these structural problems, the vocational-technical centers have not achieved their full potential as a state system serving statewide needs. Rather than operating

as a system, the centers function as a loose federation of schools coordinated by the Board of Public Education and the Superintendent whose role tends to be more that of referee than of policy initiator and developer. Three examples will illustrate this point.

--While legal responsibility for planning rests with the Board of Public Education, the planning which has taken place so far, consists mostly of adjudicating disputes over locally initiated requests for programs, funds, and facilities. In effect, planning by the board is short term and reactive. There is little evidence of efforts to identify long-range statewide needs.

--The Board and the Superintendent play a similar refereeing role in the budgetary process. There is no attempt to develop policy guidelines (other than those specified by law) or priorities in advance of budget request submission by the centers. The budgetary process, therefore, is locally initiated. At the superintendent and board level, there is an attempt to reach some kind of consensus among the centers and the superintendent's staff regarding the allocation of funds, particularly of new funds. The result of this process is predictably that decisions tend to be based upon compromises between institutional interests and aspirations rather than upon any careful evaluation of state needs and priorities.

--While there are uniform policies which have been promulgated by the Board or the Superintendent over the years, they have never been compiled systematically in a policy manual. Such a manual is basic to sound administration. Its absence creates confusion and, an often unnecessary perception of arbitrary treatment of center personnel. Also, without a manual it is difficult for the Board to systematically reevaluate old policies and directives.

The current governance of the vo-tech centers resembles governance of the University System in the 1960's. Planning and budgeting are reactive to local, and often, parochial pressures. This approach is barely adequate to a growing system in which the major issues revolve around who will get what. If there should come a need for substantial programmatic cutbacks because of decreases in enrollments or funding, there is no evident capacity for making such decisions on a selective and qualitative basis. The system will contract or stabilize the same way it grew - by institutional consensus and political compromise.

In summary, the major point of this discussion is that policy initiative is primarily at the local level and in the hands of local administrators responsible to a local board which is responsible to local taxpayers. The vocational-technical centers have not fully realized their potential as a state system serving statewide needs. This is not a matter of incompetence or individuals not doing their jobs. It is primarily the result of pressures and counter pressures created by a fragmented system of governance.

The policy issues for the Commission include:

--How much centralization/decentralization of governance is desirable?

--Are solutions to the management-accountability problems available within the present system? If so, how can they be developed and implemented? If not, what changes in the system should be proposed?

--To what extent are the problems of governance related to the system of financing?

CHAPTER III

COMPREHENSIVE STATEWIDE PLANNING AND COORDINATION

Throughout the post World War II era, most state planing and coordination of education beyond high school dealt with public four-year colleges, universities and community colleges. In recent years the focus of state planning and coordination has broadened to encompass all of post-secondary education including private and vocational institutions and programs. A 1971 task force of the Education Commission of the States recommended

> That each state recognize the overriding importance of comprehensive statewide planning for post-secondary education by making a continuous and identifiable financial commitment to it...If no such state agency exists, one should be created.

The merits of this recommendation were recognized by Congress in the Education Amendments of 1972.

> Any state which desires to receive assistance under Section 1203* or Title X** shall establish a state commission or designate an existing state agency or state commission...Which is broadly and equitably

*Section 1203 deals with "Comprehensive Statewide Planning"
**Title X deals with "Community Colleges and Occupational Education"

> representative of the general public and public and private nonprofit and proprietary institutions of post-secondary education in the state including community colleges. .junior colleges, post-secondary vocational schools, area vocational schools, technical institutes, four-year institutions of higher education and branches thereof. (Section 1202a)
>
> The Commissioner* is authorized to make grants to any state commission established pursuant to Section 1202a to enable it to expand the scope of studies and planning required in Title X through comprehensive inventories of, and studies with respect to, all public and private post-secondary educational resources in the state, including planning necessary for such resources to be better coordinated, improved, expanded or altered so that all persons within the state who desire, and who can benefit from, post-secondary education, may have an opportunity to do so. (Section 1203a)

Thus, while federal law does not mandate state planning and coordinating commissions, it does make some types of aid to post-secondary education contingent upon the existence of these commissions.

The Montana Constitution also recognized the importance of planning and invested this responsibility in the State Board of Education. The Board is charged with "long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems."

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*Refers to the U. S. Commissioner of Education

The Task Force of the Education Commission of the States, on Coordination, Governance and Structure of Post-Secondary Education, chaired by former governor Robert Scott of North Carolina concluded in a 1973 report that

> There must be a single comprehensive and coordinated effort for planning for post-secondary education and a single state responsible for carrying it out. To fragment responsibility, as some states are doing, is to risk failure at the outset. This is not to say that some elements of the post-secondary community or others should be excluded. But one agency should have the final responsibility for initiating and synthesizing the efforts and insuring that the process is continuous.

The reasons for the relatively new emphasis on comprehensive post-secondary educational planning include the growing recognition of the role of private institutions and of the public and private non-collegiate sector, scarcity of resources for all types of post-secondary education, the increasing student demand for vocational and technical education, and some disenchantment with the rather rigid barriers between traditional higher education and other components of post-secondary education.

Until recently the federal incentive for the establishment of state planning commissions did not materialize because the administration refused to fund Section 1202 or Title X of the Education Amendments of 1972. However, in March of this year, the United States Commissioner of Education announced

that approximately one million dollars (probably eighteen to twenty thousand dollars for each state) would be made available for statewide planning to state commissions which meet the criteria of Section 1202 and which are certified as meeting this criteria by the governor. In the absence of an existing state commission or board which fully meets these criteria, Governor Thomas Judge has designated the commission established by HB 764 (1973) to administer federal higher education programs as the temporary Montana post-secondary planning commission. This commission consists of the members of the Board of Regents and one trustee from each private college in Montana. The Commissioner of Higher Education was designated the administrative officer for the state post-secondary planning commission.

There are three policy issues related to comprehensive statewide planning and coordination which confront the Commission on Post-Secondary Education.

- -Should Montana have a permanent commission for comprehensive post-secondary planning?
- -If the state is to have such a commission, should it be an existing board or commission or should a new entity be established? If an existing board or commission is to be designated, which body should be selected?
- -If a commission is established or designated, what office should have administrative responsibility?

These issues are complicated by two factors. First, the governance structure of Montana post-secondary education fragments responsibility for the components of post-secondary education. Second besides statewide coordinating and planning, federal law assigns responsibility for special functions to state post-secondary education commissions.

In Montana, at present, governance of vocational-technical centers is a function of the Board of Public Education and its executive officer, the Superintendent of Public Instruction. Governance of the University System, including some authority over community colleges, resides in the Board of Regents and its executive officer, the Commissioner of Higher Education. The State Board of Education, which consists of the members of the Board of Public Education and the Board of Regents, has the constitutional responsibility for long-range planning and for coordinating and evaluating policies and programs for the state's educational systems.

It would seem that the State Board of Education might logically and constitutionally be the appropriate agency for comprehensive state planning. However, there are at least two difficulties with this approach. First, the State Board does not meet the membership criteria required by federal law in that neither private colleges nor proprietary schools are represented; and a constitutional amendment should be required if it

was deemed desirable to change the membership. Thus, the State Board, as it is now composed, would not qualify for federal funds for comprehensive statewide planning. A second problem is the actual operation of the State Board. Because it consists exclusively of members of the two governing boards and has no staff of its own, the State Board has tended to ratify without critical questioning or debate the actions of the other two boards. At this point there is little evidence that the State Board is equipped to do more or that a board which operates in this manner could conduct statewide comprehensive planning, unless such planning consists of perfunctory approval and aggregating of the plans of the Boards of Regents and Public Education.

Neither the Board of Regents nor the Board of Public Education represents the diverse constituencies required by federal law. Each deals with only a part of the state's post-secondary education system. The Regents govern most of the institutions with most of the students but comprehensive planning would of necessity have to include the vocational-technical centers, the private colleges and the proprietary schools.

Another possibility would be to permanently designate the newly created Commission on Higher Education Programs as

the comprehensive planning commission. The composition of this group could be broadened by statute to include the necessary constituencies. However, this commission would then be performing a function which is constitutionally assigned to the State Board of Education. There would also be a question of how the Commission could be augmented to assure compliance with the requirement that the general public and the different forms of post-secondary education be "broadly and equitably" represented.

Any statewide comprehensive planning commission established or designated in accordance with federal law, will have special responsibilities under Title X of the Federal Education Amendments of 1972. Since this title has not been funded and will probably not be funded by the current federal administration, there is no immediate pressure to make provisions at the state level. However, it should be kept in mind that if Title X is funded, the state commission will be eligible for planning grants for state occupational educational programs. Naturally, persons and organizations involved in vocational education in Montana, as in other states, are concerned that the commission chosen to receive any such grants be highly committed and knowledgable with respect to vocational education.

The problem of selecting a commission for comprehensive

planning is compounded by the necessity of designating an administrative officer for any such commission. The decision regarding the administrative officer is contingent upon decisions about the commission itself and its role in the state system. In many ways the Commissioner of Higher Education might be the appropriate officer. Most of post-secondary education falls under his jurisdiction. However, these decisions should be made prior to the designation of a permanent executive officer.

- -What commission or board will the officer be responsible to?
- -Will planning be most effective if it is located in an agency with other administrative responsibilities? Or should planning responsibility be divorced from administration and governance?
- -What office or officer can best deal with the diverse needs, constituent groups and programs in the planning process for Montana post-secondary education?

Finally, whichever board or commission is designated, those responsible for comprehensive statewide planning should take steps to prevent planning from being deemphasized because of the day-to-day pressures of administrative and custodial responsibilities. The statement of the 1973 Education Commission of the States Task Force is worth quoting at length here.

> ...The agency, regardless of its other duties, should consider comprehensive planning to be its primary function and should keep its planning functions distinct from its other operational functions...One problem governing boards have faced in the past, is the tendency to become so involved in their governing responsibilities that they lose sight of or delay their planning functions. In such cases, it would be wise to consider having a separate, though related, staff carry out the planning functions rather than relying on staff primarily responsible for specifically defined administrative functions.

* *

It has occasionally been suggested that it might be desirable to eliminate some of the diffused responsibility for governance by placing all types of public post-secondary education under one jurisdiction, e.g., the Board of Regents. It is doubtful that such an arrangement is feasible or workable for these reasons:

> -Federal law requires that there must be a single state board for all vocational education (secondary and post-secondary). If governance responsibility was delegated to another board, budgets and programs involving federal funds would still require approval of the Board of Public Education. Thus another level of staff analysis and board approval would be added. On the other hand, if a different board was designated the state board for vocational education, that board would acquire responsibility for secondary programs. This might reduce diffusion of responsibility at the post-secondary level while fragmenting it at the primary-secondary level, making it impossible for the Board of Public Education to carry out its responsibility to "exercise general supervision over the public school system."

-Even if federal law did not present an obstacle, there may be valid educational reasons for not separating jurisdiction over secondary and post-secondary education. Many commentators have noted that the distinctions between secondary and post-secondary vocational education are often arbitrary and that placing them under separate jurisdiction would tend to rigidify secondary-post-secondary barriers at a time when our goal should be greater coordination, flexibility and articulation.

-The experience of many states which have combined vocational and academic institutions under one board, has been negative. Boards and staff have tended to devote the bulk of their time to the universities and colleges. Appointments to board and staff positions tend to go to persons qualified, knowledgeable and committed to higher education. There is inevitably a great deal of suspicion on the part of academic and vocational educators as to whether the board and staff are using funds, particularly federal monies, for their intended purposes or whether one type of program is being "ripped off" to support another. In general, this type of governance situation fosters rivalries, resentments and poor morale.